IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2127 OF 2004

IN

SUIT NO.2130 OF 2004

...

Indian Metal & Ferro Alloys Ltd
and another ...Plaintiffs

v/s.

Malethil Suresh Kumar & ors. ...Defendants

And

State Bank of India & ors. ...Respondents

...

Ms.F. Sethna with Ms.Anuradha Datta and Ms.Das i/b Dummor Sett for the Plaintiffs.

Mr.I.R.Iyengar for Defendants Nos. 1 to 4 and 6 to 8.

Mr.C.Chavan for Respondent No.1.

CORAM: D.K.DESHMUKH, J.

DATED: 24TH JUNE,2005

P.C.:

1. This Notice of Motion is taken out the Plaintiff. The Plaintiff has filed this suit seeking several reliefs against the Defendants. The Plaintiff is seeking a decree of declaration that the Defendants have committed breach of trust. The Plaintiff also claims a decree against the Defendants that they should account for money belonging to the Plaintiff which is allegedly misappropriated by them. There are three principal prayers in the Notice of Motion. They read as under:-

> (a) that this Hon'ble Court be pleased to order and direct Respondent Nos. 1 to 5 to furnish to the Plaintiffs inspection and copies (including printed copies of all information stored electronically) of all

statements of account, cheques, bankers drafts, account opening forms, share transfer forms, mandates, correspondence, internal memoranda, books, records, accounts, receipts, invoices, instructions and other documents in the custody, possession or power of Respondent Nos. 1 to 5, whether related directly or indirectly to the accounts held and/or operated by Defendant Nos. 1 to 10, within a specific timeframe to be stipulated by this Hon'ble Court;

(b) that this Hon'ble Court be pleased to permit Respondent Nos. 1 to 5 to secure unto themselves from and out of sums escrowed by the Plaintiffs, the expenses incurred in relation to photocopying and/or printing copies of information stored electronically in relation to the accounts of Defendant Nos. 1 to 10 held and/or operated with Respondent Nos. 1 to 5, pursuant to due compliance with the terms of any Order(s) made by this Hon'ble Court, in the present Motion;

(c) that this Hon'ble Court be pleased to order and direct Respondent Nos. 1 to 5 to refrain from in any form or manner disclosing or communicating to any person or party, other than its legal advisors, the existence and/or the terms of any Order(s) and/or any applications made in relation to the due securing of any Order(s) and/or any variation and/or modification thereof or the performance of any Order(s) made by this Hon'ble Court, in the present Motion;

2. Perusal of the above quoted prayer clauses shows that all the reliefs are claimed against the Respondents and not the Defendants. The directions are claimed against the Respondent for inspection of their books of accounts and documents by the Plaintiff. Prayer clause (a) appears to be the main prayer for inspection of the documents in possession of the Respondent by the Plaintiff. Prayer clause (b) is for the expenses that may be required for occupying the documents and prayer clause (c) is for

direction against the Respondent for not disclosing things, which are mentioned in prayer clause (c). The Respondents are not parties to the suit.

3. As observed above, prayer clause (a) appears to be the main prayer. The purpose of prayer is obvious, is for collecting the evidence. The nature of the relief claimed is a direction for collection of evidence against the persons who are not parties to the suit. In short, persons who will be witnesses in the suit have been joined as a Respondents and directions are sought against them for production of the evidence. A stage for recording of evidence comes after the parties file their written statement and the court frames the issues. It is only at that stage that the burden of proof and what is the disputed questions between the parties are ascertained. It is only at that stage that the court’s directions can be sought in relation to the evidence. Presently, it is a common ground that the Defendants have not filed even their written statement. Therefore, area of dispute between the parties is not yet known. Really speaking, unless the court frames the issues on the basis of pleadings and the documents produced by the

parties, the area of the dispute between the parties will not be known. Therefore, at that stage in a given case the Plaintiff may be justified in taking out the Notice of Motion of such nature against the parties to a suit. Taking out of such Notice of Motion against the persons who are not parties to the suit is totally unjustifiable and unjustified. In my opinion, this clearly amounts to abusing the process of the court. The learned Counsel appearing for the Plaintiff relied on an ad-interim order and the final order made in Notice of Motion No.885 of 2002 and Notice of Motion No.528 of 2002 in Suit No.4829 of 2001. Perusal of the ad-interim order dated 31st October, 2001 shows that by that ad-interim order relief was granted in terms of prayer clauses (a) and (c). Perusal of prayer clauses (a) and (c) shows that those reliefs were claimed only against the Defendants and not against the persons who are not parties to the suit. It is that order which is confirmed by orders dated 27-7-2003 and 5-8-2003. Therefore, apart from the question that neither in the ad-interim order nor in the final order the question about the stage at which the such motion can be taken out is not raised and decided. The reliefs in those motions were not

claimed against the person who are not parties to the suit. Therefore, the orders passed in those motions can not constitute a precedent for the purpose of the present Notice of Motion. Then, reliance was placed on the provisions of Rule 2 of Order 10 of C.P.C. Perusal of Rule 2 of Order 10 shows that the title of that Rule is oral examination of parties or companion of party. Thus under Order 10 Rule 2, the parties to the suit can be examined or a person who is accompanying the parties to the suit can be examined. Under Order 10 Rule 2 the Court can not collect evidence from the persons who are not parties to the suit and who are not accompanying the party. Therefore, the reliance placed on the provisions of Order 10 Rule 2 is totally uncalled for and totally irrelevant. The learned Counsel, therefore, relied on several ad-interim orders passed in this Notice of Motion. The Motion is for final hearing and therefore, there is no question of placing any reliance on any ad-interim order. Therefore, reliance placed on ad-interim order as also orders passed in appeal by the Appellate Court against the ad-interim order are not at all relevant when the Court is hearing the motion finally.

4. I find, as observed above that though this motion was totally uncalled for, it was not maintainable and really speaking taking out such Notice of Motion amounts to abusing the process of the Court. Within five minutes of motion being called out for hearing, I pointed out to the learned Counsel that this motion is not maintainable and requested her to satisfy me first that the motion is maintainable. But the learned Counsel insisted on referring to several irrelevant aspects to which I have referred to above and thus consumed considerable valuable time of the Court. It is well known fact that considerable amount of public funds are spent on maintaining the Courts. Therefore, the time of the court is extremely valuable and it cannot be permitted to be misused by anybody. Any litigant who takes out proceedings which results in wasting the court's time has to be punished and one method of punishing the litigant like this is to impose exemplary costs.

5. In the result, therefore, the Notice of Motion is disposed of. The Plaintiff is directed to pay Rs.50,000/- as and by way of cost of this petition

to the Respondents.

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